

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

§ 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans.

(a) *Diversified mutual funds and unit investment trusts.* An employee may participate in any particular matter affecting one or more holdings of a diversified mutual fund or a diversified unit investment trust where the disqualifying financial interest in the matter arises because of the ownership of an interest in the fund or trust.

Example 1: An employee owns shares worth \$100,000 in several mutual funds whose portfolios contain stock in a small computer company. Each mutual fund prospectus describes the fund as a “management company,” but does not characterize the fund as having a policy of concentrating its investments in any particular industry, business, single country (other than the U.S.) or bonds of a single State. The employee may participate in agency matters affecting the computer company.

Example 2: A nonsupervisory employee of the Department of Energy owns shares in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in paragraph (a) of this section to act in matters affecting a utility company whose stock is part of the mutual fund’s portfolio because the fund is not a diversified fund as defined in § 2640.102(a). The employee may, however, seek an individual waiver under 18 U.S.C. 208(b)(1) permitting him to act. Moreover, depending upon the value of the employee’s interest in the fund and the type of particular matter in which he would participate, one of the exemptions at § 2640.202(a) or (b) for interests arising from publicly traded securities may be applicable.

(b) *Sector mutual funds.* An employee may participate in any particular matter affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, and where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund.

Example 1: An employee of the Federal Reserve owns shares in the mutual fund described in the preceding example. In addition to holdings in utility companies, the mutual fund contains stock in certain regional banks and bank holding companies whose financial interests would be affected by an investigation in which the Federal Reserve employee would participate. The employee is

not disqualified from participating in the investigation because the banks that would be affected are not part of the sector in which the fund concentrates.

(c) *Employee benefit plans.* An employee may participate in:

(1) Any particular matter affecting one or more holdings of an employee benefit plan, where the disqualifying financial interest in the matter arises from membership in:

(i) The Thrift Savings Plan for Federal employees described in 5 U.S.C. 8437;

(ii) A pension plan established or maintained by a State government or any political subdivision of a State government for its employees; or

(iii) A diversified employee benefit plan, *provided:*

(A) The investments of the plan are administered by an independent trustee, and the employee, or other person specified in section 208(a) does not participate in the selection of the plan’s investments or designate specific plan investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds or mutual funds, which are available to plan participants); and

(B) The plan is not a profit-sharing or stock bonus plan.

NOTE TO PARAGRAPH (c)(1): Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing plans for purposes of this section. However, for the exemption to apply, 401(k) plans must meet the requirements of paragraph (c)(1)(iii)(A) of this section.

(2) Particular matters of general applicability, such as rulemaking, affecting the State or local government sponsor of a State or local government pension plan described in paragraph (c)(1)(ii) of this section where the disqualifying financial interest in the matter arises because of participation in the plan.

Example 1: An attorney terminates his position with a law firm to take a position with the Department of Justice. As a result of his employment with the firm, the employee has interests in a 401(k) plan, the assets of which are invested primarily in stocks chosen by an independent financial management firm. He also participates in a defined contribution pension plan maintained by the firm, the assets of which are stocks, bonds, and financial instruments. The plan is managed by an independent

trustee. Assuming that the manager of the pension plan has a written policy of diversifying plan investments, the employee may act in matters affecting the plan's holdings. The employee may also participate in matters affecting the holdings of his 401(k) plan if the individual financial management firm that selects the plan's investments has a written policy of diversifying the plan's assets. Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing or stock bonus plans for purposes of this part.

Example 2: An employee of the Department of Agriculture who is a former New York State employee has a vested interest in a pension plan established by the State of New York for its employees. She may participate in an agency matter that would affect a company whose stock is in the pension plan's portfolio. She also may participate in a matter of general applicability affecting all States, including the State of New York, such as the drafting and promulgation of a rule requiring States to expend additional resources implementing the Food Stamp program. Unless she obtains an individual waiver under 18 U.S.C. 208(b)(1), she may not participate in a matter involving the State of New York as a party, such as an application by the State for additional Federal funding for administrative support services, if that matter would affect the State's ability or willingness to honor its obligation to pay her pension benefits.

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§ 2640.202 Exemptions for interests in securities.

(a) *De minimis exemption for matters involving parties.* An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government, or are municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed \$5,000.

Example 1: An employee owns 100 shares of publicly traded stock valued at \$3,000 in XYZ Corporation. As part of his official duties, the employee is evaluating bids for performing computer maintenance services at his agency and discovers that XYZ Corporation is one of the companies that has submitted a bid. The employee is not required to

recuse himself from continuing to evaluate the bids.

Example 2: In the preceding example, the employee and his spouse each own 100 shares of stock in XYZ Corporation, resulting in ownership of \$6,000 worth of stock by the employee and his spouse. The exemption in paragraph (a) of this section would not permit the employee to participate in the evaluation of bids because the aggregate market value of the holdings of the employee, spouse and minor children in XYZ Corporation exceeds \$5,000. The employee could, however, seek an individual waiver under 18 U.S.C. 208(b)(1) in order to participate in the evaluation of bids.

Example 3: An employee is assigned to monitor XYZ Corporation's performance of a contract to provide computer maintenance services at the employee's agency. At the time the employee is first assigned these duties, he owns publicly traded stock in XYZ Corporation valued at less than \$5,000. During the time the contract is being performed, however, the value of the employee's stock increases to \$7,500. When the employee knows that the value of his stock exceeds \$5,000, he must disqualify himself from any further participation in matters affecting XYZ Corporation or seek an individual waiver under 18 U.S.C. 208(b)(1). Alternatively, the employee may divest the portion of his XYZ stock that exceeds \$5,000. This can be accomplished through a standing order with his broker to sell when the value of the stock exceeds \$5,000.

(b) *De minimis exemption for matters of general applicability.* (1) An employee may participate in any particular matter of general applicability, such as rulemaking, in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(i) The securities are publicly traded, or are municipal securities, the market value of which does not exceed:

(A) \$25,000 in any one such entity; and

(B) \$50,000 in all affected entities; or

(ii) The securities are long-term Federal Government securities, the market value of which does not exceed \$50,000.

(2) For purposes of this paragraph (b), the value of securities owned by the employee, his spouse, and minor children must be aggregated in applying the exemption.

Example 1: The Bureau of Export Administration at the Department of Commerce is in